IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 119 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT\ \

Versus

RAMESHCHANDARA HIMATLAL MEHTA

Appearance:

MR SP DAVE APP for appellant.

MR JM PANCHAL for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/04/2000

ORAL JUDGEMENT

This appeal arises of the order dated 23rd June, 1989, made by the learned Judicial Magistrate, First Class, Dhandhuka, in Criminal Case No. 508/88,

dismissing the complaint and acquitting the accused under section 256 CRPC.

The complainant was one Mr. N.S.Patel, a Factory Inspector, and the accused was one Rameshbhai Himatlal Mehta, Manager in M/s Kirti Chemical Industries. It appears that on 7th March, 1988, an unfortunate accident occurred in the factory premises of the aforesaid M/s Kirti Chemical Industries. One Chandulal Chhaganlal, a skilled worker, while replacing the cement sheets on the roof suffered a fall and died of the injuries sustained on account of the said fall. The factory premises were inspected by the complainant on 16th April, 1988. It was found that the accused had assigned the work of replacing the cement sheets on the roof to the deceased workman and had not taken precautionary measures to prevent an accidental fall. Hence, the accused was alleged to have contravened the provisions contained in section 32 (c) of the Factories Act, 1948. The accused was thus alleged to have committed an offence punishable under section 92 of the Act. The said offence was punishable with imprisonment for a term which may extend to two years or with fine which may extend to one Lakh rupees, or with both.

Upon perusal of the Rojkam, it appears that after lodging the complaint, a summons was ordered to be issued upon the accused, and the accused had, on 11th August, 1988, entered his appearance. Since then, after several adjournments, the plea of the accused was recorded on 17th November, 1988, and the matter was adjourned for recording the evidence. Even thereafter the matter was adjourned on several occasions for one or the other reason. On all the said occasions, the complainant as well as the accused and his learned advocate had remained present. However, on 23rd June, 1989, when the case was adjourned for recording of evidence, the complainant did not remain present. The accused and his learned advocate were present before the court. The court, at 5-30 in the afternoon, there being no application for adjournment either, rejected the complaint and acquitted the accused under the powers conferred upon him under section 256 CRPC. Feeling aggrieved, the complainant has preferred the present appeal.

It is contended that the accused has committed a grave offence which is punishable with imprisonment for a term extending to two years or a fine which may extend to

Rs. 1 Lakh, or with both. Besides, the complainant had remained present althroughout the proceedings without any exception. On the fateful day i.e. on 23rd June, 1989, the complainant could not remain present for unavoidable circumstances i.e. the complainant had suffered fracture and was confined to bed. The learned Judge was, therefore, not justified in rejecting the complaint and acquitting the accused and ought to have adjourned the matter. Mr. Dave has further relied upon the averments made in the memo of appeal, which of course, are not supported by documentary evidence. It is contended that on 23rd June, 1989, the complainant had also sent an application for adjournment by a Phonogram. Mr. Dave has perused the original record and admits that no Phonogram was received by the learned Magistrate on the said date. Mr. Dave has also relied upon the judgment of this court in the matter of MADHUKUMAR J. PREM VS AMRUT NATHU & ORS (1990 {2} GLR 801). Mr. Dave has submitted that this court has taken a view that no complaint should be dismissed for delay in prosecuting the case. I am afraid, on the facts of the case, the said judgment shall have no applicability. It was a case where the complainant was present before the court, and had applied for an adjournment which was refused by the learned Magistrate and the complaint against the accused was dismissed. These being not the facts in the present case, the said judgment is not an authority on the matter at issue.

Section 256 CRPC requires that if on complaint the summons has been issued and on the day appointed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything contained thereinbefore, acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other day. The proviso thereto provides that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of the opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case. Thus, Rule 256 CRPC enjoins upon the Magistrate to acquit the accused if on the date of the hearing the complainant does not appear unless the Magistrate considers it proper to adjourn the hearing of the case to some other day or to dispense with the attendance of the complainant.

In the present case, the summons was issued upon the accused and the accused had also remained present before the learned Magistrate along with his advocate. The matter was kept for recording of the evidence and the presence of the complainant was absolutely necessary. Not only the complainant did not remain present, nor did the learned Prosecutor remain present, nor the court was requested for an adjournment. On the aforesaid facts, when the learned Magistrate has exercised his powers under section 256 CRPC and has acquitted the accused, no interference is warranted.

Appeal is dismissed.

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JOSHI